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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1930

No. 113

THE POTTSTOWN IRON COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MAY 13, 1930

CERTIORARI GRANTED JUNE 2, 1930

(35,023)

(35,023)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 892

THE POTTSTOWN IRON COMPANY, PETITIONER,

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 892

THE POTTSTOWN IRON COMPANY, Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

May it please the Court:

The petition of the Pottstown Iron Company respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Question Presented

The question presented is when is a credit of an overpayment of income and excess profits taxes for one or more years against an additional assessment of taxes for other years allowed and/or taken within the meaning of the revenue statutes.

[fol. 2]

Statement

The Commissioner of Internal Revenue, upon final audit of the petitioner's income and excess profits tax return for the calendar year 1918, found an overpayment of said taxes in the amount of $250,871.34. At the same time the said Commissioner found an underpayment of income and excess profits taxes for the calendar years 1916 and 1917 in the total amount of $229,719.22.

On January 22, 1926, the Commissioner made the additional assessments of the underpayments of taxes for the years 1916 and 1917 in the total amount of $229,719.22. On

January 29, 1926, the Commissioner approved a Schedule of Overassessments which embraced the aforementioned overpayment for the year 1918 in the amount of $250,871.34. Said Schedule of Overassessments was transmitted by the Commissioner to the Collector of Internal Revenue for the first District of Pennsylvania with instructions and authorization to immediately check the overpayments against the account of the taxpayer in the Collector's records, and determine whether the amounts in which the tax liability had been reduced should be abated in whole or in part, and, if any part of the said overassessment was found to be an overpayment, to examine all the accounts of the taxpayer for other years and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in his accounts.

The said Collector of Internal Revenue, in reply to a written inquiry from the petitioner, addressed a letter to the petitioner under date of February 23, 1926, stating that he had, after an examination of the outstanding accounts of the petitioner in his office, applied a portion of the said overassessment for 1918, to-wit, $229,719.22, to close out [fol. 3] the accounts for 1916 and 1917 which showed additional assessments in the said amount—and that the crediting and posting of $229,719.22, to the said accounts for 1916 and 1917 closed outstanding accounts on the records of his office on account of income and excess profits tax liability of the petitioner for the years 1916 to 1920 inclusive.

On February 27, 1926, the Collector returned said Schedule of Overassessments to the Commissioner together with a subsidiary schedule on Form 7805-A showing that the said credits had been made on his records and that the balance of the said overpayment for 1918, or $21,152.12, was refundable to the petitioner. The authorization of the Commissioner to issue checks covering the amount refundable as aforesaid was dated April 15, 1926.

The Commissioner allowed no interest to the petitioner on the portion of the 1918 overpayment which was applied as a credit against the 1916 and 1917 underpayments, asserting Section 1116 of the Revenue Act of 1926 as his authority for such action. The provisions of this Section of the 1926 Act provide that in the case of a credit, interest shall be paid at the rate of 6 per centum per annum from the date

the tax found to be overpaid was paid to the due date of the amount against which the credit was taken. As the 1916 and 1917 taxes were due before the 1918 taxes were paid, the Commissioner alleged that no interest was allowable under the provisions of the 1926 Act on the credit of 1918 taxes against 1916 and 1917 additional taxes.

The Commissioner conceded that the credit in question was "allowed" when the Commissioner signed the Certificate on the Schedule of Overassessments and authorized the Collector of Internal Revenue to apply the overpayment against any outstanding liabilities of the taxpayer for other years, but claimed that the credit was "taken" on some date subsequent to the passage of the Revenue Act of [fol. 4] 1926.

Sub-section (c) of Section 1116 of the 1926 Act states that Section 1116 should be applicable to any refund paid and credit taken on or after the date of enactment of the Act, which enactment date was February 26, 1926.

The petitioner contended, however, that the said credit was allowed and taken prior to February 26, 1926, certainly no later than when the Collector made the entries on the taxpayer's account in his records extinguishing the liabilities for 1916 and 1917 by the application thereto of the 1918 overpayment, which, by his own written statement, was on or before February 23, 1926, and that, therefore, the provisions of the Revenue Act of 1924, which were in effect at the time the credit was allowed and taken, should govern. The provisions of Section 1019 of the 1924 Act state that if the amount against which the credit is taken is an additional assessment, then interest should be paid on the said credit from the date the tax was overpaid to the date of the assessment of the additional tax against which the credit is taken. The additional assessments for 1916 and 1917 were made on January 22, 1926, and the petitioner therefore claimed interest on the amount of the credit of $229,719.22 from June 11, 1919, the date of payment of the taxes found to have been overpaid, to January 22, 1926, the date the additional assessments for 1916 and 1917 were made. The only issue was when the credit in question was allowed and taken, the determination of which issue would also determine the provisions of which Revenue Act should be applied in the computation of interest on the credit.

The petitioner brought suit on June 3, 1927 in the United [fol. 5] States Court of Claims for this interest and on April 7th, 1930, the said Court of Claims promulgated special findings of fact, conclusion of law and opinion (amended by order of April 21, 1930), dismissing the taxpayer's petition, and holding that the credit was taken and made effective within the meaning of the statutes on April 15, 1926, when the Commissioner signed and approved schedule (Form 7805-A) authorizing the disbursing clerk of the Treasury Department to issue checks in accordance with such schedule.

B

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. This case raises a question not heretofore decided by this Court, as to the time of the allowance of a claim for credit and as to the time the credit is taken. This question cannot be said to have been decided in the case of Girard Trust Company vs. U. S. 270 U. S. 163, for the issue there involved was the date of the allowance of a claim for refund and the difference in procedure followed by the Treasury Department in the allowance of a refund and of a credit was not specifically brought to the attention of the Court.

II. There are now pending in this Court the cases of United States v. Boston Buick Company, and United States v. Iron Cap Copper Company, Nos. 632 and 633, October Term, 1929, in which cases writs of certiorari have been granted by this Court to review the judgments of the United States Circuit Court of Appeals for the First Circuit entered in both said cases on November 5, 1929. These cases involve the question of when credit is allowed, the said Circuit Court of Appeals holding that a credit of an over- [fol. 6] payment of income and profits taxes for one year against taxes due for another year was allowed when the Commissioner of Internal Revenue signed a subsidiary schedule of refunds and credits (Form 7805-A), directing the Disbursing Clerk of the Treasury Department to pay the amounts listed thereon as refundable, and not, as contended by the Government, when the Commissioner signs the certificate on schedule of overassessments (Form 7805), and thus directs the Collector of Internal Revenue to apply

any part of the overassessments found to be overpayments against any taxes due from the taxpayers for other years.

As pointed out in the petition of the United States for writs of certiorari in the said Boston Buick Company and Iron Cap cases, this decision overturns the rule as to the computation of interest on credits followed by the Bureau of Internal Revenue in a vast number of interest cases and substituting a rule which cannot uniformly be applied. For example, in cases where there are no refunds to be made and there is no interest to be paid on credits listed on the subsidiary schedule 7805-A that schedule is not at any time signed by the Commissioner. Moreover the result of such a rule would be incongruous because since the Collector in each case actually applies the overpayment for one year against the tax due for another year upon receiving the schedule of overassessments from the Commissioner, he would thus reduce the liability of the taxpayer prior to the time that the credit would be regarded as "allowed" and in some instances without any "allowance" by the Commissioner.

III. There is a conflict in the decisions of the lower Federal courts on this question. In addition to its decision in the instant case, the Court of Claims in the cases of Swift & Company vs. U. S., unreported, decided May 6, 1929, [fol. 7] West Leechburg Steel Co. v. U. S., unreported, decided April 7, 1930, and Atlas Powder Co. v. U. S., unreported, decided April 7, 1930, has adopted the view of the Circuit Court of Appeals for the First Circuit in the Boston Buick Co. and Iron Cap Copper Company cases, holding that the credits are both allowed and taken when the Commissioner signs the subsidiary schedule (Form 7805-A) authorizing the disbursing clerk to make refunds of amounts listed thereon as refundable in tax or interest. On the other hand the District Court for the Western District of Pennsylvania in the case of Penn Smokeless Coal Company vs. U. S., 34 Fed. (2d) 205, held that a credit was allowed when the Commissioner signed the certificate on schedule of overassessments authorizing the Collector to apply the overpayment, if any, against any outstanding liabilities for other years, and in Pittsburg Bridge and Iron

Works vs. U. S., unreported, decided November 2, 1929, the said District Court approved its decision in the Penn Smokeless Coal Company case, holding that credit was "taken" prior to the passage of the Revenue Act of 1926, where it appeared that the Commissioner had performed every act with respect to the credit except the actual mailing of the check and certificate of overassessment.

The Boston Buick Company and Iron Cap Copper Company cases involve only the question as to when the credit was "allowed." The instant case involves the question of when the credit was "taken," for the government, because of its position in the Boston Buick and Iron Cap cases, must concede the credit was "allowed" prior to the date of the passage of the 1926 Act. A final settlement of the entire controversy revolving about this question must be dependent upon a decision of this Court not only covering when the credit is "allowed," but also whether the credit is "taken" simultaneously with the allowance or at some date subsequent thereto.

IV. As pointed out in the petition of the United States for writ of certiorari in the Boston Buick and Iron Cap Copper cases, these cases are of vital importance to the [fol. 8] Government and to the public not only because of the mill-ons of dollars involved in a great number of pending interest cases and those that will arise, but also because of their effect on questions involving the statutes of limitations.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Claims, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. H-229, The Pottstown Iron Company, Plaintiff vs. The United States of America, Defendant, and that the said judgment of the United States Court of Claims may be reversed by this Honorable Court, and that your petitioner may have such other and further relief

in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

The Pottstown Iron Company, by Paul F. Myers, Counsel for Petitioner.

[fols. a & 1] IN THE COURT OF CLAIMS

No. H-229

THE POTTSTOWN IRON COMPANY

v.

THE UNITED STATES

I. PETITION—Filed June 3, 1927

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The petitioner, The Pottstown Iron Company, respectfully shows:

1. The petitioner at all times hereinafter mentioned was and is a domestic corporation organized and existing under the laws of the State of Pennsylvania, engaged in the manufacture of iron, and having an office at 30th & Locust Streets, Philadelphia, Pennsylvania.

2. The petitioner duly filed with the Bureau of Internal Revenue returns for the purpose of the Federal income and excess profits taxes imposed by the Revenue Act of 1916, as amended by the Act of October 3, 1917, and the Revenue Act of 1918, for the calendar years 1916, 1917, 1918, 1919 and 1920. The total net taxes paid to the Government of the United States on the basis of said returns, prior to the final audit thereof by the Commissioners of Internal Revenue, were: 1916, $4,016.76; 1917, $119,585.51; 1918, $438,206.79; 1919, $3,753.60; and 1920, $4,130.87.

[fol. 2] 3. During the year 1925, the Commissioner of Internal Revenue made a final audit of petitioner's income and excess profits tax returns for the years 1916 to 1920, inclusive, which disclosed that the correct tax liability for the said years was as follows: 1916, $6,700.05; 1917, $346,621.44; 1918, $187,335.45; 1919, $2,987.99; and 1920, no tax

liability. The following additional assessments and overassessments were disclosed by said audit:

	Previously paid (net)	Correct tax liability	Additional assessment	Over-assessment
1916	$4,016.76	$6,700.05	$2,683.29	
1917	119,585.51	346,621.44	227,035.93	
1918	438,206.79	187,335.45		$250,871.34
1919	3,753.60	2,987.99		765.61
1920	4,130.87	None		4,130.87
Total			$229,719.22	$255,767.82

4. On or about December 18, 1925, the petitioner consented in writing to the said additional assessments and overassessments. The said additional assessments for 1916 an- 1917 were scheduled to the Collector of Internal Revenue, Philadelphia, Pennsylvania, by the Commissioner of Internal Revenue in or about January, 1926, on Special List #12, page 0, lines 3 and 4, and the said overassessments for 1918, 1919 and 1920 were likewise scheduled on Schedule #17941, in or about January, 1926. On or about February 23, 1926, the said Collector of Internal Revenue at Philadelphia, Pennsylvania, namely, B. D. McCaughn, advised the petitioner by letter bearing said date that a portion of the said overassessments for 1918, 1919 and 1920 had been applied to close out the said additional assessments for 1916 and 1917 and that, quoting from said letter, "the crediting and posting to the accounts referred to in the above paragraph leave a refund of $26,048.60 due [fol. 3] your company and the postings referred to close outstanding accounts on the records of this office on account of income and profits tax liability of your company for the years 1916 to 1920 inclusive." A copy of said letter is attached and made a part hereof as Exhibit "A."

5. Thereafter, to-wit, on or about May 18, 1926, the Collector of Internal Revenue at Philadelphia, Pennsylvania, delivered to the petitioner a Treasury Department warrant in the amount of $35,873.71, being the refund heretofore referred to in the amount of $26,048.60 plus interest thereon. The adjustment of interest on the said overassessments was made by the Bureau of Internal Revenue in accordance with Section 1116 of the Revenue Act of 1926, as is evidenced by letters dated April 9, 1926, and

January 12, 1927, signed by C. R. Nash, Assistant to the Commissioner, by W. T. Sherwood, Head of Division. Copies of said letters are attached hereto as Exhibits "B" and "C."

6. The petitioner alleges that credit of a portion of the said overassessments, to-wit, $229,719.22, against the additional assessments for 1916 and 1917 in the same total amount was taken prior to February 26, 1926, the date of the passage of the Revenue Act of 1926, and that, therefore, the interest on the said credit at the rate of 6% per annum, payable to the petitioner, should be computed from the date of the overpayment to the date of the additional assessment in accordance with the provisions of Section 1019 of the Revenue Act of 1924. The petitioner alleges that the said overpayment was made on June 11, 1919, and that the said additional assessments for 1916 and 1917 were, to the best of petitioner's information and belief, made on January 22, 1926.

[fol. 4] 7. Section 1116 of the Revenue Act of 1926, under the provisions of which the Bureau of Internal Revenue has computed the interest, reads as follows:

"(a) Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924 or this Act, then to the date of the assessment of that amount.

"(b) As used in this section—

"(1) The term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

"(2) The term 'date of the allowance of the refund' means, in the case of any income, war profits, or excess profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof."

"(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date."

Petitioner alleges that paragraph (c) of the foregoing section precludes the application of the provisions of that [fol. 5] section to the computation of interest on the overassessment taken as a credit by the petitioner, and that the provisions of Section 1019 of the Revenue Act of 1924, in effect on or about February 23, 1926, when, it is alleged, the credit was taken, should be applied. Said Section 1019 reads:

"Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

8. Petitioner therefore alleges that the Commissioner of Internal Revenue now wrongfully and illegally withholds from said petitioner interest on the said overassessment for 1918 to the amount of $229,719.22 thereof applied against the additional assessments for 1916 and 1917, at the rate of 6 per centum per annum from June 11, 1919, the date of the overpayment, to January 22, 1926, the date of the said additional assessments, amounting to $91,160.24.

9. No other action than aforesaid has been had on this claim in Congress or by any of the Departments. The peti- [fol. 6] tioner has at all times borne true allegiance to the Government of the United States. It has not in any way voluntarily aided, abetted, or given encouragement to rebellion against such Government. It is and always has been the sole and absolute owner of the claim here presented. It has made no transfer or assignment of said claim or of any part thereof or of any interest therein. It is justly entitled to the amount claimed from the United States of America, after allowing all just credits and set-offs.

Wherefore the petitioner prays judgment against the United States of America upon the facts and law for $91,160.24, with interest thereon from May 18, 1926.

Williams, Myers, Quiggle & Breeding, by Paul F. Myers, Counsel for Petitioner.

Duly sworn to by William P. Morris. Jurat omitted in printing.

[fol. 7] EXHIBIT "A" TO PETITION

Treasury Department, Internal Revenue Service, Philadelphia, Pa.

Office of the Collector

In replying refer to COD:WEB.

February 23, 1926.

The Pottstown Iron Co., 30th & Locust Sts., Philadelphia, Pa.

SIRS: Referring to your letter of the 23d instant in which you state your company consented to the assessment of deficiency in tax of $2,683.29, and $227,035.93 for the years 1916 and 1917 respectively, and also acquiesced in writing to the overassessment of $250,871.34 for the year 1918, $765.61 for the year 1919 and $4,130.87 for the year 1920—

You are advised that the overassessments referred to were scheduled to this office by the Commissioner on Schedule 17941 and after examination of the outstanding ac-

counts of this office a portion of the said overassessments which amount to $255,767.82 have been applied to close out the following accounts:

1916 income tax assessed on January 03-C. Special 12, 1926, list in the amount of $2,683.29.

1917 income tax assessed on January 04-C. Special 12, 1926, list in the amount of $227,035.93,

making a total of $229,719.22.

The crediting and posting of $229,719.22 to the accounts referred to in the above paragraph leave a refund of $26,048.60 due your company and the postings referred to close outstanding accounts on the records of this office on [fol. 8] account of income and profits tax liability of your company for the years 1916 to 1920 inclusive.

Respectfully (Sgd.) B. D. McCaughn, Collector.

bmt.

[fol. 9] EXHIBIT "B" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Refer to: IT:R:CC-4-MTH.

Apr. 9, 1926.

Williams, Myers, Quiggle & Breeding, Munsey Building, Washington, D. C.

In re Pottstown Iron Company, Philadelphia, Pa.

SIRS: Reference is made to your letter dated March 15, 1926, relative to interest on amounts refunded and credited to the above-named taxpayer as a result of an overpayment of income tax for the years 1918, 1919 and 1920.

The adjustment of interest has been made in accordance with Section 1116 of the Revenue Act of 1926, now in effect. The case will be referred to the Solicitor of Internal Revenue at an early date, however, for consideration of the points raised in your letter, and you will be duly advised of any further action taken.

Respectfully, C. R. Nash, Assistant to the Commissioner, by (Sgd.) Wm. T. Sherwood, Head of Division.

[fol. 10] EXHIBIT "C" TO PETITION

Treasury Department, Washington

Refer to: IT:C:CC-4-RCX.

January 12, 1927.

Williams, Myers, Quiggle & Breeding, Munsey Building, Washington, D. C.

In re Pottstown Iron Company, Philadelphia, Pennsylvania

SIRS: Further reference is made to your letter dated March 15, 1926, in which additional interest is claimed on behalf of the above-named taxpayer, in connection with overassessments for 1918, 1919, and 1920.

You state that credit was taken on or prior to February 23, 1926, and that, therefore, interest should be allowed under Section 1019 of the Revenue Act of 1924, instead of under Section 1116 of the Act of 1926, as computed. It appears, however, that the letter dated February 23, 1926, from the Collector of Internal Revenue to the taxpayer, upon which you base the conclusion that credit was taken on or before that date, contained merely preliminary information as to the adjustments to be made in connection with the Certificates of Overassessments and the deficiency assessments.

The Collector's office has advised that the credits involved were actually applied or posted to the assessment list on February 27, 1926. The Bureau holds that the credits could not have been taken until after the Revenue Act of 1926 became effective, and, therefore, under the provisions of Section 1116-c of that Act, the interest was correctly allowed as required by the said Revenue Act of 1926.

Respectfully, C. R. Nash, Assistant to the Commissioner, by (Sgd.) Wm. T. Sherwood, Head of Division.

[fol. 11] II. GENERAL TRAVERSE—July 13, 1927

And now comes the Attorney General; on behalf of the United States, and answering the petition of the claimant

herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

III. Argument and Submission of Case

On March 14, 1929, this case was argued and submitted on merits by Mr. Paul F. Myers, for plaintiff, and by Mr. Charles R. Pollard, for defendant.

IV. History of Proceedings

On March 20, 1930, the court filed an order remanding the case to the General Docket.

On March 20, 1930, the case was submitted on merits without argument.

[fol. 12] V. **Special Findings of Fact (as Amended by the Order of April 21, 1930), Conclusion of Law, and Opinion of the Court (as Amended by the Order of April 21, 1930)**—Filed April 7, 1930

Mr. Paul F. Myers for plaintiff.

Mr. Charles R. Pollard, with whom was Mr. Assistant Attorney General Herman J. Galloway, for defendant.

Mr. Ralph E. Smith was on brief.

This suit was instituted to recover $91,160.24 interest on $229,719.22, representing a portion of an overpayment for 1918 applied as a credit against additional assessments for 1916 and 1917, from June 11, 1919, the date of the overpayment to January 22, 1926, the date of the additional assessments.

The commissioner allowed no interest on the overpayment applied as a credit, claiming that the provisions of section 1116 of the revenue act of 1926, 44 Stat. 9, 119, section 153, Tit. 26, U. S. C. A., govern the allowance of interest. The plaintiff, however, contends that the credit was

taken prior to the enactment of the revenue act of 1926, and while the revenue act of 1924, 43 Stat. 253, 346, was in force, and that interest on the credit is therefore payable under section 1019 of the 1924 act.

The commissioner on January 29, 1926, signed and transmitted to the collector of internal revenue a schedule of overassessments and, also, transmitted to him a list of additional assessments made on January 22, 1926. The collector returned the schedule of overassessments and the schedule of credits and refunds certified by him on February 27, 1926, and the last-mentioned schedule was signed and approved by the commissioner April 15, 1926.

The position of the plaintiff is that a credit is taken and made effective when the collector examines his records, makes entries in the taxpayer's accounts thereon, and certifies the schedules to the commissioner.

The defendant, on the other hand, contends that the credit was allowed when the commissioner signed the first schedule of overassessments on January 29, 1926, and that the credit was taken within the meaning of the statutes when the plaintiff received from the commissioner the certificates of overassessments, together with the Treasury checks for the amount of the refund or interest.

[fol. 13] SPECIAL FINDINGS OF FACT

1. Plaintiff, a Pennsylvania corporation with office and place of business at Philadelphia, filed its income-tax return for 1916 on February 27, 1917, showing an income tax of $529.16, which was paid at the time and in the manner provided by law. September 23, 1918, it filed a supplemental income-tax return for 1916, which showed an understatement of tax in the original return of $3,487.60. Thereafter, in December, 1918, the Commissioner of Internal Revenue made an additional assessment against plaintiff for 1916 in the amount of $3,487.60, the total tax assessed for 1916 being $4,016.76.

2. March 26, 1918, plaintiff filed its income and profits tax returns for 1917 showing a tax of $461.19, which was paid at the time and in the manner provided by law. Subsequently it filed amended income and profits tax returns for 1917 showing that the income and profits tax due there-

on was $119,124.32, which was paid in December, 1918, the total tax assessed for 1917 being $119,585.51.

3. March 15, 1919, plaintiff filed a tentative return for 1918 estimating the tax at $441,701.33. No assessment was made on this return. The final complete income and profits tax return for 1918 was filed June 11, 1919, showing the corrected income and profits tax due as $438,206.79, which amount was paid in four installments of $150,000 on March 15, 1919, $69,103.40 on June 11, 1919, $109,551.70 on September 13, 1919, and $109,551.69 on December 15, 1919.

4. March 13, 1920, plaintiff filed its income and profits tax return for 1919 showing a total tax of $4,799.17, which was paid March 13, 1920.

5. March 10, 1921, it filed its income and profits tax return for 1920 showing a tax of $5,138.68, which was paid in four equal installments of $1,284.67 on March 10, June 15, September 10, and December 9, 1921.

6. February 13, 1925, the Commissioner of Internal Revenue approved a schedule of overassessments, designated as Schedule IT:A:13307, Form 7805, which embraced overassessments in favor of the plaintiff of $1,045.57 for 1919 and $1,007.81 for 1920. Interest was allowed thereon for 1919 in the amount of $308.44 and for 1920 of $192.15. Treasury checks for the amounts of the overpayments, with interest, were thereafter issued and received by plaintiff.

7. Subsequent to the filing of the returns and the payment of the tax shown thereon, the commissioner made an examination and audit of them and, by letter of December 31, 1925, notified plaintiff of his determination that there were deficiencies of $2,683.29 for 1916 and $227,035.93 for 1917, and that there were overassessments of $250,871.34 for 1918, $765.61 for 1919, and $4,130.87 for 1920, the total of the deficiencies being $229,719.22 and the total of the overassessments being $255,767.82. The aforementioned letter of the commissioner to the plaintiff, which contained a detailed computation resulting in the determination as above set forth, stated:

"In view of your letter dated December 18, 1925, in which you specifically consent to the immediate assessment of the

deficiency in tax of $2,683.29 and $227,035.93 for the years 1916 and 1917, respectively, and acquiesce in the overassessments of $250,871.34 for the year 1918, $765.61 for the year 1919, and $4,130.87 for the year 1920, which several deficiencies in tax and overassessments are equal in [fol. 14] amount to the totals set forth in the first paragraph of this letter, the said deficiencies in tax will be listed for immediate assessment and the overassessments will be allowed on the next schedule to be approved by the commissioner.

8. January 29, 1926, the Commissioner of Internal Revenue approved a schedule of overassessments designated as Schedule IT:A:17941, Form 7805, which embraced overassessments in respect of the tax of the plaintiff of $250,871.34 for 1918, $765.61 for 1919, and $4,130.87 for 1920. This schedule was transmitted to the collector for the first district of Pennsylvania for his action in accordance with the directions appearing thereon. The collector complied with the directions and on February 27, 1926, signed and certified this schedule together with the entries made thereon by him, together with Schedule IT:R:17941, Form 7805-A. The collector certified that the overassessments for the years mentioned constituted overpayments. These schedules were made a part of the record as Exhibit 5 and are made a part of these findings by reference.

9. Of the overpayment of $250,871.34 for 1918, $2,683.29 was applied as a credit against the deficiency for 1916 and $227,035.93 against the deficiency for 1917, and the balance of $21,152.12 was refunded. The overpayments of $765.61 for 1919 and $4,130.87 for 1920 were also refunded. The authorization of the Commissioner of Internal Revenue to the disbursing clerk of the Treasury Department appearing upon the schedule of refunds and credits, Form 7805-A certified to him by the collector of internal revenue, was dated April 15, 1926. Treasury checks for the amounts of the refund were thereafter mailed to plaintiff by the collector of internal revenue, together with copies of certificates of overassessment in the amounts of $250,871.34 for 1918, $765.61 for 1919, and $4,130.87 for 1920.

10. On February 23, 1926, plaintiff directed a letter to the collector of internal revenue at Philadelphia relative

to the overassessments and deficiencies and the crediting of the overpayments against the deficiencies, which letter, so far as material here, was as follows:

"On December 18, 1925, this Company specifically consented in writing to the immediate assessment of a deficiency in tax of $2,683.29 and $227,035.93 for the years 1916 and 1917, respectively, and specifically acquiesced in writing to the overassessments of $250,871.34 for the year 1918, $765.51 for the year 1919 and $4,130.87 for the year 1920. This acquiescence was specifically confirmed by the Commissioner in Bureau letter of December 31, 1925.

"The above additional assessments for 1916 and 1917 were scheduled to your office by the Commissioner in January, 1926, on Special List #12, page 0, lines 3 and 4. The [fol. 15] overassessments for the years 1918, 1919 and 1920 were scheduled to your office by the Commissioner in January, 1926, on Schedule #17941."

On the same date, to wit, February 23, 1926, the collector wrote the plaintiff a letter which, so far as material here, was as follows:

"You are advised that the overassessments referred to were scheduled to this office by the Commissioner on Schedule 17941 and after examination of the outstanding accounts of this office a portion of the said overassessments which amount to $255,767.82 have been applied to close out the following accounts:

"1916 income tax assessed on January 03-C Special 12, 1926 List in the amount $2,683.29.

"1917 income tax assessed on January 04-C Special 12, 1926 List in the amount 227,035.93.

making a total of $229,719.22.

"The crediting and posting of $229,719.22 to the amounts referred to in the above paragraph leave a refund of $26,048.60 due your company and the postings referred to close outstanding accounts on the records of this office on account of income and profits tax liability of your company for the years 1916 to 1920, inclusive."

11. Plaintiff has paid no interest on the underpayment of tax for 1916 of $2,683.29 and the underpayment for 1917 of $227,035.93, or any part thereof.

12. Plaintiff has been allowed and paid interest on the amounts refunded from the dates of overpayment to January 29, 1926, the first date on which the schedule of overassessments was signed by the commissioner, as follows:

Year	Amount refunded	Interest allowed		Interest
		From—	To—	
1918	$21,152 12	6/11/19	1/29/26	$8,417.67
1919	765.61	3/13/20	1/29/26	269 98
1920	276.86	12/ 9/21	1/29/26	68 74
	1,284.67	9/10/21	1/29/26	335.91
	1,284.67	6/15/21	1/29/26	356.24
	1,284 67	3/10/21	1/29/26	376.57

[fol. 16] 13. The practice in the Bureau of Internal Revenue was, at the times hereinbefore mentioned, as follows with relation to certificates of overassessment:

Such a certificate accompanies the schedule of overassessments (Form 7805) when it is transmitted by the Commissioner of Internal Revenue to the collector of internal revenue.

If the collector finds upon examination of the taxpayer's accounts that the overassessment shown on the schedule of overassessments is an abatement, the certificate of overassessment is mailed directly to the taxpayer by the collector.

If the collector finds that an overassessment is an overpayment and the overpayment is applied as a credit against an outstanding tax, the collector returns the certificate of overassessment along with the schedule of overassessment and subsidiary schedule (Forms 7805 and 7805-A, respectively).

If the collector finds that the overassessment is an overpayment and is refundable, the collector returns the certificate of overassessment to the commissioner along with the schedule of overassessments, and the subsidiary schedule (Forms 7805 and 7805-A, respectively).

Upon receipt by the commissioner from the collector of Forms 7805 and 7805-A, together with the certificate of overassessment, the certificates of overassessment which

show that the total amounts appearing on the certificates have been applied as a credit, are held in the office of the commissioner until warrants are issued by the disbursing clerk of the Treasury Department to the taxpayers for the actual refunds of taxes appearing on the same schedule returned by the collector.

Thereupon the certificates of overassessment covering refunds and interest, if any, together with warrants for the amount thereof, and the certificates of overassessment covering the amounts applied as a credit by the collector, together with warrants for the amount of interest, if any, on said credits, are returned to the collector for mailing to the taxpayers.

No other written communication is given by the commissioner to the taxpayer of the allowance of a credit or refund.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him.

Opinion

Littleton, Judge, delivered the opinion of the court:

Under section 1019 of the revenue act of 1924, 43 Stat. 253, 346, interest on credits against additional assessments was payable from the date of overpayment to the date of the assessment of the additional tax against which credit was applied. The plaintiff contends that this case falls within the provisions of this section.

[fol. 17] Section 1116 of the revenue act of 1926, 44 Stat. 9, 119, section 153, Tit. 26, U. S. C. A., changed the situation with reference to the payment of interest upon credits, Riverside and Dan River Cotton Mills, Inc., v. United States, decided February 10, 1930, and, with respect to overpayments and additional assessments for years prior to 1921, provided for the payment of interest upon overpay-

ments applied as credits only to the date on which the additional tax should have been paid. By subdivision (c) the provisions of that act were made applicable to any credit taken after the enactment of the revenue act of 1926. The defendant contends that the credits with which we are here concerned were taken subsequent to February 26, 1926.

The court is of opinion that the credit of a portion of the overpayment for 1918 against the deficiencies for 1916 and 1917 was taken and made effective within the meaning of the statutes, on April 15, 1926, when the commissioner signed and approved the schedule of refunds and credits theretofore certified to him by the collector of internal revenue, authorizing the disbursing clerk of the Treasury Department to issue checks in accordance with such schedule, and that the defendant, therefore, correctly refused to pay interest upon that portion of the overpayment for 1918 credited against the deficiencies for prior years. The assessment of the additional tax for 1916 and 1917 was not made under any of the revenue acts mentioned in section 1116 of the revenue act of 1926, and, since the due date of the tax for 1916 and 1917 was prior to the date of the overpayment for 1918, no interest is allowable. Riverside and Dan River Cotton Mills, Inc., v. United States, supra; West Leechburg Steel Company v. United States, H-203, and Atlas Powder Company v. United States, J-151, decided this date.

The fact that the plaintiff on February 23, 1926, wrote a letter to the collector of internal revenue with reference to the crediting of overassessments against additional assessments to which it had agreed, and the acknowledgment of the receipt of such letter by the collector on the same date with a statement as to the condition of plaintiff's accounts for the years 1916 to 1920, inclusive, does not change the situation. The statute does not make the taking of a credit dependent upon advice from the taxpayer to the collector as to its position with reference to the deficiencies and overassessments, nor upon advice from the collector as to what entries he has made upon hi record. Neither does the statute suspend the effective date of a credit until the taxpayer has received the checks for the refund of tax together with interest, if any, and the certificates of overassessments from the Commissioner through the collector.

[fol. 18] The position of the plaintiff is that the credit is taken and made effective under the statute on the date on which the collector makes the entries in his records in the taxpayer's account and that the preparation and certification by the collector of the schedules to the Commissioner, and approval thereof by the Commissioner, are of no significance in connection with the credit. We think there is no merits in this contention. West Leechburg Steel Company v. United States, supra.

In these cases involving interest upon credits, the defendant argues that when the commissioner signs the schedule of refunds and credits he only authorizes the disbursing clerk to pay the amount of tax shown to be refundable and the interest upon any refund or credit, and that this can not be regarded as the taking of a credit. We think by this action the commissioner does more than merely authorize the payment of the refund and the interest. He approves the report of the collector, finally determines that there has been an overpayment, and makes effective a credit of that overpayment against the additional tax for another year.

When the collector receives from the commissioner a schedule of overassessments and an assessment of an additional tax, and finds upon examination of his records that the assessment is an overpayment and exactly equals the additional assessment for another year, leaving no amount to be shown as refundable, he nevertheless makes appropriate entries in the schedule of overassessments, Form 7805, prepares the subsidiary schedule of credits, Form 7805-A, embodying his report, and also prepares his record of assessments and payments, each of which he certifies and returns to the commissioner, together with certificates of overassessments forwarded to him by the commissioner with the schedule of overassessments. Upon the receipt of these documents from the collector the commissioner, if he finds that any interest is payable upon the credit, has a check issued for the amount thereof which is forwarded to the collector, together with these certificates of overassessment to be mailed to the taxpayer. If the commissioner determines that an overpayment to be credited is one that bears no interest under the statute, he forwards the certificates of overassessment to the collector with instruc-

tions that he mail them to the taxpayer. Whether the commissioner, in such a case, signs the schedule certified to him by the collector or not, the credit is taken and made effective by whatever action the commissioner takes in approving the report of the collector. It is stipulated that in cases of this kind the certificates of overassessment received from the collector with his reports are returned by the commissioner to the collector for mailing to the taxpayer. The date on which this is done, if the commissioner does not formally sign the schedule, would constitute the commissioner's approval of the report of the collector and would make effective the credit of the overpayment against the additional assessment.

The plaintiff is not entitled to recover and the petition must therefore be dismissed. It is so ordered.

Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

Graham, Judge, concurs in view of the previous decisions of the court.

[fol. 19] VI. JUDGMENT

At a Court of Claims held in the City of Washington on the 7th day of April, A. D., 1930, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him according to law, which sum is found to be $22.23.

VII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On April 9, 1930, the plaintiff filed a motion for additional findings of fact.

On April 14, 1930, the court filed an order overruling said motion.

On April 16, 1930, by leave of court, the plaintiff filed a second motion for additional findings of fact.

On April 21, 1930, the court entered an order allowing in part and overruling in part plaintiff's motion for additional findings of fact, and amended the special findings of fact and opinion as appears on pp. 14, 15, 17 and 18, of this record.

[fol. 20] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,023. Court of Claims. Term No. 892. The Pottstown Iron Company, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed May 13, 1930. File No. 35,023.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1930

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is advanced and assigned for hearing immediately following Nos. 632 and 633, United States of America vs. Boston Buick Company, and The United States of America vs. Iron Cap Copper Company.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.